IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/02/2004

CORAM

THE HONOURABLE Mr. JUSTICE P.D.DINAKARAN

Writ Petition No.15668 of 2001

National General Employees' Union
Central Cattle Breeding Farm Branch,
Alamathi,
Chennai-52,
rep. by its General Secretary,
Mr.P.Thomas Rathinam. .. Petitioner

-vs-

1. The Director,
Central Cattle Breeding Farm,
Alamathi,
Chennai-52.

2. The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
Sashtri Bhavan,
Chennai-600006.

3. Union of India,
rep. by its Secretary,
Ministry of Agriculture,
Dept. of Animal Husbandry
and Dairying,
Krishna Bhavan,
New Delhi.

..R3 impleaded as 3rd respondent
as per order of the Court
dt.8.7.2003 in W.P.No.15668/01. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorari as stated therein.

For Petitioner : Mr.Vijay Narayanan
for M/s.M.Gnanasekar

For Respondents : Mr.S.M.Deenadayalan,

A.C.G.S.C.-R1 & 3.

:O R D E R

The petitioner union, representing 30 employees, who are working as casual labourers in the first respondent-Management, raised an industrial dispute before the second respondent Tribunal in I.D.No.57 of 20 01, pursuant to a reference by the third respondent Union of India to adjudicate on the following issue:
"Whether the demand of National General Employees Union, Central Cattle Breeding Farm Branch for regularisation of 30 casual workmen listed in the annexure is justified ? If not, to what relief the workmen are entitled?"

1.2. The core contention made on behalf of the petitioner-Union is that the right of these casual labourers for regularisation already got confirmed and concluded by an order dated 5.6.1989 of the Central Administrative Tribunal, Madras Bench (for brevity 'the CAT'), in Original Application No.184 of 1988 wherein, admittedly, the first respondent-Management is a party. In the said O.A.No.184 of 1988, the petitioner-Union herein sought for regularisation of the service of 9 4 casual labourers, whose names were furnished therein, with effect from 6.3.1985 on their completion of 240 days in twelve calendar months as required in law.

1.3. It is also not in dispute that the first respondent-Management as well as the third respondent- Ministry of Agriculture, Government of India, who is also a party in the said O.A., undertook to complete the review of appointment of casual workers within the prescribed time limit of six months and to send a proposal to regularise all casual labourers, who had rendered service for more than 240 days in twelve calendar months, so that their services could be regularised.

1.4. In view of the stand taken by respondents 1 and 3 in the said O.A., the CAT, by order dated 5.6.1989, observing that the first respondent had already initiated action for regularisation of eligible casual labourers on the basis of the guidelines issued by the Government of India, directed the first respondent-Management to pay equal pay for equal work on par with regular (Group D) employees with effect from 07.06.1988.

1.5. In spite of the said undertaking given before the CAT by respondents 1 and 3, the first respondent-Management failed to regularise 3 0 casual labourers, who had completed 240 days of service in twelve calendar months in the first respondent-Management, which necessitated the petitioner-Union to raise the said industrial dispute viz., I.D.No.57 of 2001 against the first respondent-Management before the second respondent Tribunal.

1.6. However, the first respondent-Management contended that they would regularise the service of the said 30 employees as and when the vacancies arise and accepting the same, the second respondentTribunal, dismissed the said I.D., by an award dated 8.8.2001.

1.7. Hence, the petitioner-Union has filed the above writ petition

seeking a writ of Certiorari to call for the concerned records relating to the Award dated 8.8.2001 in Industrial Dispute No.57 of 2 001 (Tamil Nadu State Industrial Tribunal I.D.No.73 of 2000) from the file of the second respondent and quash the same.

2.1. Mr.Vijay Narayan, learned counsel appearing for the petitioner-Union, assailing the impugned award dated 8.8.2001 passed by the second respondent-Tribunal, contends that:-
(i) the undertaking made by the first respondent-Management before the CAT, which was also recorded in the order dated 5.6.1989 by the CAT, is unconditional and the same is binding on them; and
(ii) the said 30 casual labourers are entitled for regularisation as a matter of their statutory right on completion of their 240 days of continuous service in twelve calendar months.

2.2. In this regard, Mr.Vijay Narayan, learned counsel appearing for the petitioner, relied upon the following decisions of the Apex Court as well as the CAT:-
(i) Surender Singh v. Engineer in Chief, CPWD, reported in 1986 (1) SCC 639;
(ii) Bhagwati Prasad v. Delhi State Mineral Development Corporation, reported in (1990) 1 SCC 361;
(iii) Dharwad P.W.D. EMPL. ASSN. v. State of Karnataka, reported in (1990) 2 SCC 396;
(iv) State of Haryana & Others v. Piara Singh & Others, reported in 1993(II)LLJ 937;
(v) State of Haryana v. Surinder Kumar, reported in 1997(7) SCC 633

;
(vi) Daily Rated Casual Labour v. Union of India, reported in (1998) 1 SCC 122;
(vii) Raj Narain Prasad v. State of U.P., reported in (1998) 8 SCC 4

73;
(viii) V.Ramesh v. Union of India, reported in 2000 (1) AISLJ; and
(ix) Gujarat Agricultural University v. Rathod Labhu Bachar, reported in 2001 SOL Case No.036.

2.3.1. In any event, as there arose about 38 regular vacancies between 22.2.1991 and 1.1.2004, either due to superannuation or voluntary retirement or death of the permanent staff in the first respondentManagement, the said 30 casual labourers are entitled to be regularised without any objection.

2.3.2. Mr.Vijay Narayan, learned counsel appearing for the petitioner, furnished the following details with respect to the vacancies that arose due to superannuation/voluntary retirement/death of the permanent employees:-

Details showing the dates of superannuation/
VRS/Death of the employees:

Sl.No.	Name of the person	Designation	Date of super-annuation/VRS/ Death	Details
1	P.Paramasivam	Milker/Attendant	22.02.91	Death
2	K.Srinivasan	Tractor Cleaner	31.05.91	Death
3	P.Arumugam	Agriculture Attendant	23.03.92	Death
4	B.V.Subramani	Chowkidar	28.02.93	Retired
5.	T.S.Krishnan	Chowkidar	06.11.93	Death
6.	P.Muthuraj	Agriculture Attendant	27.11.93	Death
7.	M.Sarasammal	Agriculture Attendant	15.01.95	Death
8.	N.Veeraswamy	Safariwala	30.06.95	Retired
9.	N.Ranmganathan	Milker/Attendant	05.10.95	Death
10.	V.Mohan	Agriculture Attendant	18.03.96	Death
11.	G.Nellakandan	Chowkidar	25.04.96	Death
12.	G.Kanniappan	Chowkidar	26.05.96	Death
13.	A.Munuswamy	Chowkidar	30.06.96	Retired
14.	P.Subramani	Agriculture Attendant	05.08.96	Death
15.	P.Karunaharan	Milker/Attendant	06.11.96	Death
16.	C.Sekar	Agriculture Attendant	23.06.97	Death
17.	K.Durai	Milker/Attendant	08.07.97	Death
18.	Nataraja Poosari	Agriculture Attendant	..	Death
19.	C.Selvaraj	Cultivation Belder	03.07.98	Death
20.	D.Baskar	Cultivation Belder	14.06.98	Death
21.	K,.Duraiswamy	Chowkidar	12.05.99	Retired
22.	J.Kuppan	Milker/Attendant	08.01.99	Death
23.	K.Masilamani	Cultivation Belder	20.11.99	Death
24.	S.Nagammal	Agriculture Attendant	30.11.99	Retired
25.	A.K.Kamalammal	Agriculture Attendant	30.11.99	Retired
26.	A.K.Kamalammal	Agriculture Attendant	30.11.99	Retired
27.	R.Amirthammal	Agriculture Attendant	29.02.00	VRS
28.	T.Rathinam	Agriculture Attendant	18.04.01	Death
29.	V.Ranganathan	Milker/Attendant	14.05.01	VRS
30.	E.Selvaraj	Agriculture Attendant	30.07.03	Death
31.	E.Narayanaswamy	Peon	02.01.03	Death
32.	P.Munusamy	Agriculture Attendant	28.02.03	Retired
33.	K.R.Kasi	Agriculture Attendant	30.04.03	Retired
34.	M.Chinnaswamy	Cultivation Belder	29.09.03	Death
35.	Dhanapal	Milker/Attendant	25.11.03	VRS
36.	K.Muniammal	Cultivation Belder	30.11.03	Retired
37.	R.Devendiran	Agriculture Mate	12.12.03	Death
38.	K.Devadoss	Mali	01.01.04	Death

3. Mr.S.M.Deenadayalan, learned Additional Central Government Standing Counsel appearing for respondents 1 and 3, reiterated the stand taken by the first respondent-Management before the second respondentTribunal to the effect that these 30 casual labourers would be regularised only as and when the vacancies arise in Group-D service.

4. I have given careful consideration to the submissions of both sides.

5.1. It is settled law that the principle of equal pay for equal work is not an abstract doctrine and denial of equal pay for equal work is violative of Articles 14 and 39(d) of Constitution of India, vide Kishori Mohan Lal Bakshi v. Union of India, reported in AIR 1962 SC 1 139, followed in Surinder Singh v. Engineer-in-Chief, CPWD, reported in 1986 (1) SCC 639.

5.2. Refusal to regularise the service of the employees without increments from the date of their entitlement on completion of 240 days of service in twelve calendar months is again a violation of Articles 14, 16, 38(2), 39(d) and 32 of the Constitution of India and also violative of Article 7 of International Covenant on Economic, Social and Cultural Rights, vide Daily Rated Casual Labour v. Union of India, reported in (1998) 1 SCC 122, wherein the Supreme Court had held thus;
" ... The State cannot therefore deny at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend the benefits enjoyed by the regularly recruited employees. Such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages. It may be that the casual labourer has agreed to work on such low wages. But he does so because he has no other choice. It is poverty that has driven him to that stage. The Government should be a model employer..

...It is needless to observe that India is a socialist republic. It implies the existence of certain important obligations which the State has to discharge. The right to work, the right to free choice of employment, the right to just and favourable conditions of work, the right to protection against unemployment, the right of everyone who works to just and favourable remuneration ensuring a decent living for himself and his family, the right of everyone without discrimination of any kind to equal pay for equal work, the right to rest, leisure, reasonable limitation on working hours and periodic holidays with pay, the right to form trade unions and the right to join trade unions of one's choice and the right to security of work are some of the rights which have to be ensured by appropriate legislative and executive measures. It is true that all these rights cannot be extended simultaneously. But they do indicate the socialist goal. The decree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the existence of industrial peace throughout the country. ..."

5.3. The Apex Court, again, in Bhagwati Prasad v. Delhi State Mineral Development Corporation, reported in (1990)1 SCC 361, held that any artificial break in service of the daily rated workers would amount to deprivation of their benefits of continuity of service and that any break of more than three months to be excluded in computation of the three years period and the regularisation to be made by phases in accordance with seniority.

5.4. The Apex Court in Dharwad P.W.D. Employees Association v.

State of Karnataka, reported in (1990) 2 SCC 396, while dealing with the equal pay for equal work and providing security for service for regularising the casual employment within a period, held that the said philosophy is not that of the Court but is ingrained in the Constitution as one of the basic aspects.

5.5. The Apex Court in State of Haryana & Others v. Piara Singh & Others, reported in 1993 (II) LLJ 937, while dealing with the rights relating to regularisation, held that there can be no rule of thumb in such matters.

Relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one.

5.6. It is true that the Court does exercise its restrain where facts are such where extent of creation of post creates financial disability vide Gujarat Agricultural University v. Rathod Labhu Bechar, reported in 2001 SOL Case No.036. But, once there are materials before the second respondent-Tribunal herein to show that the impugned casual labourers have entered 240 days of continuous service in twelve calendar months in the first respondent-Management and their service is still availed by the first respondent-Management all these years, that itself is evident about their existence, the service of the 30 casual labourers of the petitioner-Union is indispensable and therefore, the want of vacancy does not arise in the matter of regularisation of the said 30 casual labourers. In that event, such regularisation should be made within a reasonable time, as held by the Apex Court time and again.

5.7. Concededly, neither the counter affidavit filed by the first respondent nor the third respondent deals with the undertaking made on behalf of respondents 1 and 3 before the CAT, which was recorded in the order dated 5.6.1989 in O.A.No.184/88 by the CAT; nor there is any convincing explanation by the learned Additional Central Government Standing Counsel appearing on behalf of respondents 1 and 3 as to the non-compliance of the undertaking made on behalf of respondents 1

and 3 before the CAT, which was recorded in the order dated 5.6.1989; nor it is the case of respondents 1 and 3 that the right of the casual labourers, who had completed 240 days of continuous service in twelve calendar months in the first respondent-Management, is further subject to the availability of the posts and vacancies. None of the decisions relied upon by the learned counsel for the petitioner is either distinguished or contended as not applicable to the case of the said 30 casual labourers. In any event, there is absolutely no explanation for non-filling up of vacancies, which were caused due to superannuation/voluntary retirement/death of 38 permanent employees as referred to above.

5.8. On the other hand, concededly, the first respondentManagement gave an undertaking to regularise the casual labourers before the CAT almost 15 years ago and the same was also recorded by the CAT in the order dated 5.6.1989. But, still the first respondentManagement contends that the said 30 casual labourers of the petitioner-Union could not be regularised for want of

vacancies even though the 38 vacancies arose due to superannuation/voluntary retirement/death of the permanent employees and therefore, the submission made by Mr.S.M. Deenadayalan, learned counsel appearing for the first and third respondents, was so artificial and contrary to the materials available on record. The second respondent-Tribunal has not taken into account the ratio laid down by the Apex Court in the matter of regularisation of the casual labourers referred to above and has ignored the undertaking made on behalf of the first respondent-Management before the CAT, which was also recorded in the order dated 5.6.l989 by the CAT.

5.9. For all these reasons, I am inclined to allow the writ petition as prayed for, by quashing the impugned award dated 8.8.2001 passed by the second respondent-Tribunal and directing the first respondent-Management to pass appropriate orders, regularising the service of 30 casual labourers of the petitioner-Union with effect from the date of raising the industrial dispute before the competent authority, within a period of thirty days from the date of receipt of copy of this order and giving them the benefit of continuity of service for the purpose of terminal/retirement benefits from the date of completion of their 240 days service in twelve calendar months in the first respondent-Management.
The writ petition is allowed with costs of Rs.5,000/-.

Index : Yes
Internet: Yes

ATR

To,
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Alamathi,
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Central Government Industrial
Tribunal-cum-Labour Court,
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